(19)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
(DIVISION BENCH)

CORAM : Hon'ble Shri S.R. Nayak, CJ
Hon'ble Shri Satish K. Agnihotri, J.

Misc. Appeal No. 574 OF 2005

APPELLANTS

1. Keshav @ Kesho, S/o Kali Ram Banjara, aged about 43 yrs.
2. Smt. Lalita Bai, W/o Kesho Banjara, aged about 40 years.
3. Ku. Bhagvati, D/o Kesho Banjara, Aged about 21 years, All R/o Village Barbaspur, Thana & Tehsil Lormi, Distt. Bilaspur (C.G.)

Versus

RESPONDENTS

1. Pavitrasen, S/o Narendrapal Dahire, aged about 27 years, Vehicle Driver, Daheria Bus Service, Bus No. C.G. 07-C/0243, R/o Bicharpur, Thana & Tehsil - Lormi, Distt. Bilaspur (C.G.)
2. Prasen Kumar, S/o Ramcharan Dahire, aged about 40 years, Vehicle Owner, Daheria Bus Service, Bus No. CG-07-C/0243, R/o Village Sureghat, Thana & Tehsil Mungeli, Distt. Bilaspur (C.G.)
3. The New India Insurance Company Ltd., Branch Office, Rajendranagar Chowk, Bilaspur (C.G.)

Present:

Mr.Vimlesh Bajpai, learned counsel for the appellants.

Mr. Prashant Jayaswal, Sr. Adv., with Mr. Ali Asgar, learned counsel for respondent No.3.

ORAL ORDER
(Passed on 1st of December 2005)

The following Order of the Court was passed by

S.R. Nayak, CJ:

(20)

In a death case, in a claim application filed by the parents and unmarried sister of the deceased, the Tribunal has awarded a sum of Rs. 1,92,000/- under the head of loss of dependency and Rs. 2000/- towards funeral expenses. Thus, a total sum of Rs. 1,94,000/- with interest @ 9% has been awarded to the claimants. The claimants not being satisfied with the quantum of compensation awarded by the MACT have preferred this appeal.

2. We have heard learned counsel for the parties.

3. It was contended by learned counsel for the appellants-claimants that the MACT ought not to have deducted 2/3rd income of the deceased towards his personal expenses. It was also contended that the deceased was doing milk vending business and he had owned 8-10 buffalos and he was earning average income of Rs. 200/- per day and Rs. 6,000/- per month. It was also contended that the MACT is not justified in not awarding any compensation under the heads of loss to estate and loss of filial love.

4. On the other hand, learned standing counsel for the Insurance Company would support the impugned award and contend that what is awarded is just and reasonable compensation and it does not warrant for any interference.

5. Having heard learned counsel for the parties, a short question that arises for decision is whether the compensation awarded by the MACT, in the facts and circumstances of the case and evidence on record, could be regarded as just and reasonable compensation within the

contemplation of the Motor Vehicles Act, 1988 (*for short the 'Act'*) or if not, what could be just and reasonable compensation.

6. The deceased has left behind him both the parents and unmarried sister. It has come in the evidence that the claimants were dependants on the income of the deceased. Normal Rule in such case is to deduct not more than 50% towards personal expenses of the deceased though in certain cases the Court would be justified in deducting only 1/3rd. But in this case without any justifiable reason the Tribunal has deducted 2/3rd of the income of the deceased towards his personal expenses. However, we have no good reason to take the income of the deceased at the rate of more than 3,000/- per month although PW -2 in his evidence has stated that the deceased was daily selling 20-25 Kgs. of milk. From that isolated statement we could not jump to a conclusion that the deceased was earning daily income of Rs. 200/-. The Tribunal is also not justified in not awarding any compensation towards loss to estate and loss of filial love which are permissible heads to award compensation.

6. In the result and for the foregoing reasons, we award total compensation of Rs. 3,30,000/- under the following heads:-

(I)	Loss of dependency	-	2,88,000/-
(II)	Funeral expenses	-	2,000/-
(III)	Loss of estate	-	20,000/-
(IV)	Loss of filial love	-	20,000/-
	Total	-	3,30,000/-

with interest @ 9% P.A. from the date of claim petition till payment. The Insurance Company shall deposit the balance compensation before the MACT within six weeks from today. The MACT is directed to deposit a sum of Rs. 1,30,000/- in any Nationalized Bank or Postal Savings Account, whichever earns more interest initially for a period of three years

and the balance of compensation shall be paid to the claimants. There is no order as to costs.

7. The appeal is allowed to the extent indicated above.

Sd/-
Chief Justice
Judge

Sd/-
Satish K. Agnihotri
Judge